IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5271 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAYMA KASAM JUMA

Versus

CHAIRMAN - ANJAR AREA DEVELOPMENT AUTHORITY

Appearance:

1. Special Civil Application No. 5271 of 2004

MR NALIN K THAKKER for Petitioner No. 1

MR NIKHILESH J SHAH for Respondent No. 1

MR SN SHELAT, ADVOCATE GENERAL, with Ms MAITHILI MEHTA, AGP, for Respondent No. 2-3

MR YS MANKAD for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 12/08/2004

ORAL JUDGEMENT

RULE. Service of rule is waived by learned advocate Shri N.J. Shah for respondent No. 1, by learned AGP Ms. Maithili Mehta for respondents Nos. 2 and 3 and by learned advocate Shri Y.S. Mankad for respondent No. 4. Looking to the facts of the case, and in view of the request made by the learned advocates, the petition is finally heard today.

2. The circumstances in which the petitioner has approached this court are as under :

2.1 According to the petitioner, he is a tenant in respect of land bearing survey No. 2935 situated at Anjar. The said land belongs to Shri Anjar Ajepal Jagir Dharmada Trust and respondent No. 4 is the sole trustee and administrator of the said trust. In pursuance of Anjar Town Planning Scheme No. 1 made by respondent No. 1 under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as 'the Act'), the said survey number was given Original Plot No. 518 and in lieu of Original Plot No. 518, Final Plot No. 518 was allotted to the said Trust.

2.2 The apprehension of the petitioner tenant is that the petitioner would be losing his tenancy right because the land, which has been occupied by the petitioner, is to be now reserved for socially and economically weaker sections of the society. It has been submitted by learned advocate Shri Nalin Thakker appearing for the petitioner that in the course of implementation of the scheme, the petitioner tenant will have to vacate the area occupied by him as a tenant, and there are all chances that the petitioner might not get any other plot and he might lose his tenancy right. It has been submitted by him that in the past the petitioner had made an effort to purchase the land in respect of which he is having tenancy right but respondent No. 4 had refused to sell the said land to him.

3. It has been submitted on behalf of the respondents that looking to the provisions of sec. 81 of the Act, the right, which the petitioner tenant had in the original plot, would not come to an end, but the said right would be transferred wholly or in part to Final Plot No. 518.

4. Looking to the aforestated legal position, I am sure that the petitioner, who is a tenant in respect of the land in question, will be having his right transferred to F.P. No. 518, as the petitioner was

having right of tenancy in Original Plot No. 518.

5. Another grievance, which has been ventilated by learned advocate Shri Thakker, is that the petitioner will be evicted from the land in question, whereas respondent No. 1 would give possession of F.P. No. 518 to respondent No. 4 at a later point of time and thereby the petitioner would be put to difficulties. Learned advocate Shri N.J. Shah appearing for respondent No. 1 has submitted that possession of F.P. No. 518 shall be given to respondent No. 4, i.e., the sole trustee and administrator of Shri Anjar Ajepal Jagir Dharmada Trust, within a period of 15 days from today. It has been thus submitted that the petitioner would not be put to dificulties becase within 15 days, the petitioner would not be dispossessed of the land in question.

6. Learned advocate Shri N.J. Shah appearing for respondent No. 1 has submitted that it is possible to hand over possession of F.P. No. 518 to respondent No. 4 within a fortnight and possession shall be given to respondent No. 4 as and when respondent No. 4 approaches respondent no. 1. In view of the above statement, respondent No. 1 is directed to handover possession of F.P. No. 518 to respondent No. 4 as and when respondent No. 4 approaches respondent No. 1 for the purpose.

The petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

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